

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application) DOCKET NO. 2009-0049
)
 of)
)
 WAI'OLA O MOLOKA'I, INC.)
 For review and approval of rate)
 increases; revised rate schedules;)
 and revised rules.)
 _____)

PUBLIC UTILITIES
COMMISSION

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FILED

COUNTY OF MAUI'S MOTION TO INTERVENE

CERTIFICATE OF SERVICE

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COUNTY OF MAUI'S MOTION TO INTERVENE

COUNTY OF MAUI (the "County"), by and through its attorneys, BRIAN T. MOTO, Corporation Counsel, JANE E. LOVELL, Deputy Corporation Counsel, and BRONSTER HOSHIBATA, moves to intervene in this docket as follows:

I. INTRODUCTION

The County seeks to intervene in Wai'ola O Moloka'i, Inc.'s ("Wai'ola") Amended Application, filed on June 29, 2009.¹ The County is a customer of the utility and depends upon water service for fire protection and water for County beach parks located on the island of Molokai. If granted, Wai'ola's Amended Application, which requests a rate increase of approximately 384.7%, will certainly have a substantial effect on County taxpayers. The County's interest in this proceeding cannot be adequately represented by any other party involved, including the Consumer Advocate, who has taken positions adverse to the County in other related proceedings.

This motion is made pursuant to Chapter 91 and Sections 269-13 and 269-16, Hawaii Revised Statutes, and Section 6-61-55, Hawaii

¹ Wai'ola filed its initial application on March 2, 2009. The PUC dismissed it without prejudice because Wai'ola did not submit audited financial statements. *Order Denying Wai'ola O Molokai, Inc.'s Request to Submit its Unaudited Financial Statements in Lieu of Audited Financial Statements filed April 2, 2009 at 9*. Wai'ola's Amended Application filed June 29, 2009 was deemed complete by the PUC on July 31, 2009. *Order Regarding Completed Amended Application and Other Initial Matters filed July 31, 2009 at 5*. The PUC entered similar orders with respect to the Application filed by Molokai Public Utilities, Inc. in Docket No. 2009-0048.

Administrative Rules. The County further requests that the PUC take notice of the record and file in two related matters before the PUC, Molokai Public Utilities, Inc., Wai'ola O Moloka'i, Inc., and Mosco, Inc., Docket No. 2008-0115 and the County's formal complaint, Docket No. 2008-0116. They are related proceedings that set forth the background and actions of the utilities and their parent company, Molokai Properties, Ltd., which created public turmoil on Molokai in 2008 because of the companies' threats to shut down the utilities.

II. BACKGROUND

A. Molokai Properties Threatens to Shut Down Water and Wastewater Service to West Molokai in 2008.

In late March 2008, Molokai Properties, Ltd. (also known as Molokai Ranch) informed the PUC that it was planning to shut down its subsidiaries, Wai'ola, Moloka'i Public Utilities, Inc. ("MPU"), and Mosco, Inc. (collectively, "Utilities"). On or about May 30, 2008, Molokai Properties, Ltd. unilaterally announced that its subsidiaries would cease all water and wastewater service to their 1,200 customers on Molokai unless some public or private entity assumed the Utilities' operations.

B. The PUC Initiates a Temporary Rate Relief Proceeding in Response to MPL's Threats to Shut Down Its Utilities.

As a result of the Utilities' threats to abandon their customers, the PUC instituted a temporary rate relief proceeding. See Order Instituting a Proceeding to Provide Temporary Rate Relief to Moloka'i Public Utilities, Inc.,

Wai'ola O Moloka'i, Inc. and Mosco, Inc., filed June 16, 2008, Docket No. 2008-0115. The PUC named the County as a party to the proceeding stating "the County has an interest in ensuring that its citizens have access to basic water and wastewater services." *June 16, 2008 Order at 15-16.* In its Order instituting the proceeding, the PUC noted:

As it is the County's responsibility to ensure that its citizens have access to basic water and wastewater service, the Commission urges the County to act expeditiously to do what is necessary to acquire the water and wastewater systems. . . . [W]e ask the County be ready to take these systems over when the Utilities eventually discontinue providing service.

Id. at 10.

Although there is no statutory or legal authority for the PUC to order the County to acquire and take over the Utilities' systems, on June 25, 2008, the Consumer Advocate, an *ex officio* party, filed a Statement of Position supporting the PUC's order. *Division of Consumer Advocacy's Statement of Position filed in Docket No. 2008-0115 on June 25, 2008 at 1.* The County's position in that proceeding was, and still is, that the County cannot be forced to acquire or to operate the Utilities, whether by order of the PUC or through action by any other state government entity.

C. The PUC Grants Temporary Rate Relief to the Utilities.

On August 14, 2008, the PUC authorized a six-month temporary rate increase for the Utilities from September 1, 2008 to February 28, 2009.

Order Approving Temporary Rate Relief filed August 14, 2008 in Docket No. 2008-0115.

The Utilities subsequently requested an additional six month extension or until such time necessary for the companies to obtain approval of a general rate application. *Moloka'i Public Utilities, Inc., Wai'ola O Moloka'i, Inc., and Mosco, Inc.'s Motion to Extend Order Approving Temporary Rate Relief filed October 29, 2008 in Docket No. 2008-0115.* The PUC granted the request and the temporary rate was extended to August 2009. *Order Approving Extension of Temporary Rate Relief and Request for An Extension to File General Rate Case Applications filed February 24, 2009 in Docket No. 2008-0115.*

D. Rate Increase Applications.

On March 2, 2009, Wai'ola filed this proceeding. Also on March 2, 2009, MPU filed its rate increase Application in PUC Docket No. 2009-0048.² On April 2, 2009, the PUC dismissed without prejudice Wai'ola's Application until Wai'ola submitted audited financial statements. *Order Denying Wai'ola O Moloka'i, Inc.'s Request to Submit its Unaudited Financial Statements in Lieu of Audited Financial Statements filed April 2, 2009 at 9.* The PUC ruled similarly with respect to MPU's Application. *See Order Denying Molokai Public Utilities, Inc.'s Request to Submit its Unaudited Financial Statements in Lieu of Audited*

² The County has also filed a Motion to Intervene in the MPU Rate Application proceeding.

Financial Statements filed on April 2, 2009 in PUC Docket No. 2009-0048 at 9-10.

On June 29, 2009, Wai'ola submitted the pending Amended Application requesting, among other things, the following:

1. an increase in its rates and charges from \$1.85 per 1,000 gallons to \$6.6549 (Phase I), and then to \$8.9675 (Phase II);
2. an automatic power cost adjustment clause; and
3. an increase in its connection fee from \$50.00 to \$100.00.

Wai'ola O Moloka'i, Inc.'s Amended Application filed June 29, 2009 at 2, 10.

Likewise, MPU filed its Amended Application requesting, among other things, the following:

1. an increase in its rates and charges from \$3.18 per 1,000 gallons to \$7.9996 (Phase I), and then to \$9.6061 (Phase II);
2. an automatic power cost adjustment clause;
3. an increase in its reconnection fee from \$75.00 to \$150.00; and
4. a purchase fuel adjustment clause.

Moloka'i Public Utilities, Inc.'s Amended Application filed June 29, 2009 at 2, 10.

E. The County is a Customer of the Utilities.

The County is a customer of Wai'ola and MPU, and depends upon water service provided by the companies for, among other things, fire protection through fire hydrants along Kaluakoi Road, through Maunaloa town, and in the Kualapuu area. In addition, the County's Department of Parks and Recreation relies on the companies for water for the County's Popohaku Beach Park and for the County's Kualapuu Park.

III. GROUNDS FOR INTERVENTION

The PUC has discretion to decide whether a party may intervene in this matter. The rules set forth a list of factors to be considered in any intervention. As set forth below, when a party has specific interests in the proceeding and those interests are not protected by existing parties, a party should be permitted to intervene.

Hawaii Administrative Rule § 6-61-55 states in relevant part:

- (a) A person may make an application to intervene and become a party by filing a timely written motion in accordance with sections 6-61-15 to 6-61-24, section 6-61-41, and section 6-61-57,³ stating the facts and reasons for the proposed

³ Section 6-61-57 provides that a motion to intervene or participate in a public utility rate increase case "shall be filed not later than ten days after the last public hearing held pursuant to the published notice of the hearing." The County's Motion to Intervene in this general rate increase matter is timely because the public hearing took place on Molokai on September 3, 2009, making the deadline for a motion to intervene September 14, 2009 (September 13, 2009 is a Sunday).

intervention and the position and interest of the applicant.

- (b) The motion shall make reference to:
- (1) The nature of the applicant's statutory or other right to participate in the hearing;
 - (2) The nature and extent of the applicant's property, financial, and other interest in the pending matter;
 - (3) The effect of the pending order as to the applicant's interest;
 - (4) The other means available whereby the applicant's interest may be protected;
 - (5) The extent to which the applicant's interest will not be represented by existing parties;
 - (6) The extent to which the applicant's participation can assist in the development of a sound record;
 - (7) The extent to which the applicant's participation will broaden the issues or delay the proceeding;
 - (8) The extent to which the applicant's interest in the proceeding differs from that of the general public; and
 - (9) Whether the applicant's position is in support of or in opposition to the relief sought.

For the reasons set forth below, the PUC should grant the County's Motion to Intervene.

1. The Nature of the County's Statutory or Other Right to Participate In the Hearing.

The PUC previously recognized the significance of the County's participation in the temporary rate increase proceeding in Docket No. 2008-0115 when the PUC named the County as a party and stated that the County "has an interest in ensuring that its citizens have access to basic water and wastewater services." *June 16, 2008 Order filed in Docket No. 2008-0115 at 15-16.* The PUC also commented on the potential need for the County or some other third party to take over if the Utilities shut down. *See June 16, 2008 Order at 7.* Accordingly, the County has a right to participate in the proceedings because the County must be afforded the opportunity to protect its interests.

2. The Nature and Extent of the County's Property, Financial, and Other Interests in the Pending Matter.

The County is a customer of Wai'ola and MPU and relies upon the water provided by these utilities for firefighting and other purposes, such as maintaining the County's public parks located in the affected areas. Clearly, a substantial and exorbitant rate increase as proposed by Wai'ola and MPU will have a significant financial impact on the County as a customer. The County's interests are not adequately represented by the Consumer Advocate, given the Consumer Advocate's positions in the prior dockets. *See Division of Consumer Advocacy's Statement of Position filed June 25, 2008 at 1.*

3. The Effect of the Pending Order As to the County's Interest.

The County would be directly affected should Wai'ola's and MPU's requests and rate increases be approved because the County is a customer whose interests are not adequately represented by the Consumer Advocate.

4. There Are No Other Means Available Whereby the County's Interests May Be Protected.

The applicable statutes and rules provide for a contested case hearing, preceded by a public hearing to be held when there is an application for rate increases, in which "consumers or patrons of the public utility may present testimony to the commission concerning the increase." Haw. Rev. Stat. § 296-16(b). After such hearing and review and consideration of the "probable entitlement and financial need" for a rate increase, the PUC may then authorize a rate increase, which may be appealed by only persons "aggrieved in [the] contested case proceeding." Haw. Rev. Stat. §§ 296-16(c) and 296-15.5.

Pursuant to those sections, if the County is not permitted to intervene, it will be precluded from directly participating in the proceeding and be precluded from an appeal, should an appeal be warranted. There are no other means by which the County will be able to directly advocate its interests in this proceeding and be permitted to file an appeal should an appeal be necessary, unless it is permitted to intervene and submit the documents, testimony, and arguments necessary to present its position to the PUC.

5. The Extent to Which the County's Interest Will Not Be Represented By Existing Parties.

The Consumer Advocate is an *ex officio* party to any proceeding before the PUC and “shall represent, protect, and advance the interests of all consumers, including small businesses, of utility services.” Haw. Rev. Stat. § 269-51.

In the PUC's temporary rate proceeding in 2008 (Docket No. 2008-0115), the Consumer Advocate took a position contrary to the County's interests. Specifically, the Consumer Advocate submitted a Statement of Position stating that the temporary rate increase period was to allow the County or a third party to take over the Utilities' system. *See Division of Consumer Advocacy's Statement of Position filed June 25, 2008 at 1.* The Consumer Advocate also supported the temporary rate increases, albeit “reluctantly,” *Id.* at 3, without first having conducted the necessary financial analysis.

The County is concerned that the Consumer Advocate may take similar positions in this proceeding, and thus, the County must protect its interests in this proceeding.

6. The County's Participation Will Assist the PUC in the Development of a Sound Record.

Having been a party to the 2008 proceedings in Docket No. 2008-0115, the County is familiar with Wai'ola, MPU and the Utilities' positions,

financial information, and organizational structure. The County will also be able to provide much-needed context to the underlying issues which form the bases for Wai'ola's and MPU's requests for a rate increase.

Further, the County is deeply concerned that the financials submitted by Wai'ola and MPU do not fully represent the financial picture of these companies and its parent and related companies (e.g., Molokai Properties, Ltd., Mosco, Inc.). The County seeks to intervene to ensure that the PUC is fully and properly informed of the Utilities' true financial picture.

In order to have a full and complete record in these proceedings, therefore, it is necessary to have the participation of the County to the preceding matter.

7. The County's Participation in this Matter Will Not Broaden the Issues or Delay the Proceedings.

The County does not seek to intervene to broaden the issues or delay the proceedings in this matter. Rather, the County seeks to intervene to protect its interests, to ensure that the PUC and the Consumer Advocate do not take positions adverse to the County, and to ensure that a complete and full financial picture of the Utilities and its parent company are presented to the PUC.

8. The County's Interests Differ from the General Public's Interest.

The County's interests differ from the general public's interest. In the prior dockets, the PUC and the Consumer Advocate both appeared to be taking the position that the County should or could be required to take over the Utilities. The County profoundly disagrees, and therefore must participate in this proceeding in order to protect its interests.

9. The County Opposes the Rate Applications Filed by Wai'ola and MPU.

The County opposes the pending rate applications because the financial data submitted to the PUC does not accurately portray the Utilities' complete financial picture. The State Department of Health's hearing officer has determined that the Utilities and the parent company, Molokai Properties, Ltd., are one and the same. The First Circuit Court affirmed that decision in its entirety.⁴ Therefore, the parent company's finances, and all of the inter-company transactions, must be considered.

⁴ A copy of the Department of Health's Findings of Fact, Conclusions of Law, Decision and Order and of the First Circuit Court's decision were provided to the PUC by the County's attorney during the September 3, 2009 public hearing, with the request that they be made a part of the record in this docket.

IV. ALTERNATIVELY, PARTICIPATION WITHOUT INTERVENTION

If the PUC believes the County should not be permitted to intervene, then it surely ought to permit the County's participation under Haw. Admin. R. § 6-61-56. That section provides, in relevant part:

- (a) The commission may permit participation without intervention. A person or entity in whose behalf an appearance is entered in this manner is not a party to the proceeding and may participate in the proceeding only to the degree ordered by the commission. The extent to which a participant may be involved in the proceeding shall be determined in the order granting participation or in the prehearing order.

As with a motion to intervene, a person having an interest in the proceeding may make an application to participate, to include the following information:

- (1) A clear and concise statement of the direct and substantial interest of the applicant;
- (2) The applicant's position regarding the matter in controversy;
- (3) The extent to which the participation will not broaden the issues or delay the proceeding;
- (4) The extent to which the applicant's interest will not be represented by existing parties;
- (5) A statement of the expertise, knowledge or experience the applicant possesses with regard to the matter in controversy;
- (6) Whether the applicant can aid the commission by submitting an affirmative case; and

(7) A statement of the relief desired.

Haw. Admin. R. § 6-61-56(b)(c).

For the reasons stated above, the County should be permitted to participate should the PUC deny the County's Motion to Intervene. The County is familiar with Wai'ola's and MPU's financial organization and structure, having been a party to the prior proceedings before the PUC, and possesses relevant information which could aid the PUC in this proceeding.

V. CONCLUSION

Based on the foregoing, the County requests that it be permitted to intervene in this matter because it has an interest in the proceedings, the Consumer Advocate will not adequately represent the County's interests, and the County's interests differ from those of the Utilities' other customers.

DATED: Honolulu, Hawaii, September 11, 2009.



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BEFORE THE PUBLIC UTILITIES COMMISSION
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and revised rules.)	
_____)	

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was duly served on the following parties on September 11, 2009, at their last known addresses in the manner specified below:

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HAND DELIVERY

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CATHERINE P. AWAKUNI, ESQ.

HAND DELIVERY

Executive Director

Consumer Advocate

Department of Commerce and Consumer Affairs

Division of Consumer Advocacy

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DATED: Honolulu, Hawaii, September 11, 2009.

A handwritten signature in black ink, appearing to read 'Margery S. Bronster', is written over a horizontal line.

MARGERY S. BRONSTER

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